

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT AT ROANOKE, VA FILED MAY 16 2005 JOHN F. CORCORAN, CLERK BY: <i>ST</i>
--

MARCUS DARRELL MACK,
Petitioner,

v.

UNITED STATES,
Respondent.

) Civil Action No. 7:05-CV-00296
) Criminal Case No. 3:97-CR-50040
)

) **MEMORANDUM OPINION**
)

) By: Hon. Norman K. Moon
) United States District Judge

Petitioner Marcus Darrell Mack, a federal inmate proceeding pro se, brings this action to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255. In his petition, Mack requests resentencing as a result of the recent Supreme Court decision in United States v. Booker, 125 S. Ct. 738 (Jan. 12, 2005).

Thompson filed an action to Vacate, Set Aside, or Correct Sentence on December 7, 2001. See Civil Action 7:01-CV-00973. An applicant must obtain authorization from the court of appeals prior to bringing a second or successive action in district court under § 2255. See 28 U.S.C. § 2244(b)(3)(A). On April 12, 2005, the Court of Appeals for the Fourth Circuit denied Mack's request to file a successive motion under § 2255 petition. Therefore this court files Thompson's petition and dismisses it without prejudice, pursuant to 28 U.S.C. § 2244(b)(3)(A). An appropriate order will be entered this day.

ENTER: This 16th day of May, 2005

Norman K. Moon
UNITED STATES DISTRICT JUDGE